

DEPARTMENT OF STATE REVENUE

04-20210086.MOD

Memorandum of Decision: 04-20210086
Sales Tax Penalty
For the Year 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department agreed with Indiana Automobile Dealer that it was entitled to a refund of a penalty assessed when Automobile Dealer's sales tax electronic payment was rejected by Automobile Dealer's bank; Automobile Dealer exercised reasonable care in submitting the tax payment, and the bank's rejection was not the result of Automobile Dealer's willful neglect or carelessness.

ISSUE

I. Sales Tax - Penalty and Interest.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IC § 6-8.1-10-1(e); IC § 6-8.1-10-5; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer argues that it is entitled to a refund of a previously paid penalty on the ground that its late payment of a sales tax was not due to willful neglect.

STATEMENT OF FACTS

Taxpayer is an Indiana automobile dealer which regularly collects, and remits Indiana sales tax paid by its customers.

Taxpayer filed its April 2021 sales tax return along with payment of approximately \$620,000. Taxpayer's bank declined to honor Taxpayer's payment. The Indiana Department of Revenue ("Department") issued a "Notification of Returned Payment." The Department issued Taxpayer an assessment for the original \$620,000 along with an additional \$64,000 interest and penalty charge.

Taxpayer paid the entire assessment including the original tax amount and the additional penalty and interest charge. Taxpayer submitted a refund request (Form GA-110L) requesting a refund of the \$64,000 interest and penalty amount.

In its refund request, Taxpayer explained the basis for requesting the refund.

Although sufficient funds were available, the March 2021 ACH (automated clearing house) payment was rejected by Taxpayer's bank. The ACH payment of [\$620,000] exceeded Taxpayer's daily limit of \$600,000.

Along with the completed GA-110L, Taxpayer included a copy of a letter from its bank, explaining as follows:

At the time the debit was submitted to the bank, [Taxpayer] had available funds on deposit in the Account sufficient to pay the debit. However, the debit was returned because the amount of the debit exceeded the maximum per transaction limit that was previously established by [Taxpayer] for any ACH Debits originated by DOR ITS Payments under its ACH Company Identification number.

The Department declined Taxpayer's refund request, Taxpayer disagreed with that decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

I. Sales Tax - Penalty and Interest.

DISCUSSION

The issue is whether Taxpayer has provided sufficient documentation and explanation needed to establish that Taxpayer is entitled to a refund of the Department's penalty assessment.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including Taxpayer's penalty assessment - is presumptively valid. *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana law, IC § 6-8.1-10-5, imposes a "bad check" penalty when the Department is unable to obtain payment on a check, credit card, debit card, or electronic funds transfer.

In addition to the "bad check" penalty, IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if a tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment." However, IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

The "bad check" statute, [IC 6-8.1-10-5\(c\)](#) addresses waiver of the "bad check" penalty. "If the person subject to the penalty under this section can show that there is reasonable cause for the check not being honored, the department may waive the penalty imposed under this section."

Reasonable cause is defined in [45 IAC 15-11-2\(b\)](#) as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

There are apparently four parties to this transaction; Taxpayer, Taxpayer's bank, the clearing house, and Indiana's bank as the intended recipient. Taxpayer maintains that the \$600,000 clearance limit was set by its bank on ACH debits. However, Taxpayer's bank states that the ACH transaction debit limit on was put in place by Taxpayer. In the final analysis, someone was asleep at this switch because Taxpayer's bank, Taxpayer, the clearing house were all in a position to assure that corrective action was taken. Nonetheless, the error did occur. However, Taxpayer always had money in place to cover the payment, Taxpayer corrected the error days after the transaction initially failed, and Taxpayer acted in good faith by immediately paying the tax, interest, and penalty.

Despite the fact that Taxpayer erred in submitting the ACH payment, the Department concludes that Taxpayer has met its statutory burden of establishing that it acted with "reasonable care" and that the payment error was not due to Taxpayer's carelessness or willful neglect.

Although under IC § 6-8.1-10-1(e), the Department is unable to abate or refund any of the interest charges, Taxpayer's protest is sustained to the extent that it is entitled to a refund of the penalty amount.

FINDING

Taxpayer's protest of the Department's decision denying a refund of the penalty is sustained. Taxpayer's protest of the Department's decision denying a refund of interest charges is respectfully denied.

October 20, 2021

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